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ALEXANDER

NO. 83-5227

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOHN HARVEY ADAMSON,

Petitioner,

-vs-

STATE OF ARIZONA,

Respondent,

ON WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did not the majority of the Arizona Supreme Court apply the correct test for harmless error by considering the record as a whole?

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STATEMENT OF THE CASE

In June 1976 Adamson was charged with the car-bombing murder of reporter Don Bolles. He pled guilty to second-degree murder in January, 1977, and was sentenced in November, 1978. Under conditions of the plea agreement, the state called upon him to testify at the planned retrial of James Robison and Max Dunlap after the Arizona Supreme Court reversed their convictions in March, 1980. Steadfastly maintaining that he had no obligation to testify at a retrial, Adamson produced a list of "demands" that he considered conditions precedent to his testimony. Refusing to accede to those demands, the Attorney General sought, by way of special action, to have the Arizona Supreme Court determine whether appellant had breached his obligations under the plea agreement. The Arizona Supreme Court resolved that issue in favor of the state and permitted reinstitution of the original charge of open murder. State v. Adamson, 125 Ariz. 579, 611 P.2d 932 (1980). Subsequently Adamson sought, and was denied, relief from the federal district court in Phoenix and the Ninth Circuit. This Court denied a petition for certiorari in 1982. Adamson proceeded to trial in October, 1980. The Arizona Supreme Court affirmed the conviction and sentence. State v. Adamson, ____Ariz.____, 665 P.2d 972 (1983). That court denied rehearing June 22, 1983. A summary of the evidence adduced at trial follows.

Richard Ryan, former court reporter, testified that in May, 1976, at the Ivanhoe Lounge on Central, Adamson asked him whether he knew Don Bolles. Appellant asked him to call Bolles and say that he (Adamson) wanted to talk to him about the Funks and Sam Steiger. The last week in May, again at the Ivanhoe, Adamson asked Ryan whether he had called Bolles. Ryan did contact Bolles and relayed Adamson's message and name. Afterward, Ryan called Adamson and told him he had contacted

Bolles. Ryan also stated that he had frequently seen Adamson with attorney Neal Roberts at the Ivanhoe. (R.T. of Oct. 7, 1980, at 37-59.)

Bernie Wynn, political editor for the Arizona Republic, shared an office with Bolles at the state capitol during May through June 1976. The morning of June 2, Wynn found a note in his typewriter. The note informed him that Bolles had gone to meet the "guy with the info on Steiger" at the Clarendon House, and bore Bolles' typed signature. Later that day, Wynn discovered a handwritten note in Bolles' desk that said "John Adamson, lobby at 11:15, Clarendon House, Fourth and Clarendon." Wynn identified the writing as Bolles'. Since Bolles had discussed meeting a man, Wynn had some idea about the matters to which the notes alluded. (R.T. of Oct. 7, 1980, at 60-67.)

Judy Holliday, desk clerk at the Clarendon House June 2, 1976, recalled seeing Don Bolles in the lobby that morning. A caller asked if there was a Don Bolles in the lobby, and Bolles spoke with that person on the desk phone. Shortly after Bolles left the lobby, Ms. Holliday heard the explosion in the parking lot. (R.T. of Oct. 7, 1980, at 69-80.)

Leslie Arnold was just pulling into the Clarendon House parking lot when the bomb attached to the floorbard beneath Bolles' vehicle seat detonated. She put a rag under his head. He told her twice, "Adamson did it." He also told her that he was investigating a Mafia organization called Emprise, and asked her to remember it because he did not think he was going to make it. In addition, Bolles stated that he had an appointment with John Adamson, but Adamson had not appeared. (R.T. of Oct. 7, 1980, at 84-91.)

Lelon Reed, a refrigerator repairman who was working nearby, applied makeshift tourniquets to both Bolles' legs.

Describing the pool of blood leading from Bolles' body to the front of the car, Reed stated that Bolles' left leg, from the buttock to the ankle, looked like hamburger. Reed heard Bolles mention Adamson's name three times. (R.T. of Oct. 7, 1980, at 92-103.)

Attorney Max Klass was in an office building adjacent to the parking lot when the explosion occurred. As he entered the southeast corner of the lot, he found a mound of flesh the size of a softball. Klass, who knew Bolles, testified that he did not recognize him as he lay in a huge pool of blood. Bolles told Klass, "Adamson sent (or set) me." (R.T. of Oct. 7, 1980, at 104-14.)

Fire Captain Jerry VanSant stated that part of the car's floorboard had blown through the muscle portion of Bolles' lower right leg, shredding it. Bolles said that the Mafia had made good their threats, and urged rescuers to hurry because he believed that he was dying. (R.T. of Oct. 7, 1980, at 115-26.)

The afternoon of June 3, Phoenix Police Detective Jon Sellers communicated with Don Bolles at St. Joseph's Hospital. Sellers asked questions and, by means of finger and head signals, Bolles gave affirmative or negative answers. Bolles indicated that he had gone to the Clarendon House the day before to meet Adamson and received a call from him while there. The purpose of the meeting was to gather information about Sam Steiger. Bolles had met Adamson 4 days earlier on the east side of Phoenix. Bolles identified a 1975 driver's license photograph of Adamson as the man he had met 4 days earlier, and as the person he had intended to meet June 2. In addition, Bolles indicated that he suspected Emprise Corporation was behind the bombing. Sellers testified that Emprise and the Funks owned many dog-racing tracks. (R.T. of Oct. 10, 1980, at 72-90.)

Various criminalists and members of the Phoenix Police bomb squad testified about the origin, composition, and functioning of the radio-controlled bomb that killed Bolles. Th bomb consisted of an ammonium-nitrate type of dynamite secured to the underside of Bolles' car by two (or more) horseshoe magnets with a red krinkle finish. Investgators traced the triggering device from Buena Park to San Diego, California. (R.T. of Oct. 8, 1980, at 4-128.)

Gail Owens testified that she accompanied Adamson to San Diego in April 1976. They went to West Coast Hobbies, where Adamson purchased something that fit into a shoe box. A few weeks after their return to Phoenix, Adamson asked her whether she knew Bolles, and twice asked her to go to the Brookshire to see whether Bolles visited there. He told her that if everything worked out, "I'll have two more and make a lot of money." He called her the afternoon of June 2, 1976, and told her that something had happened and he would not see her for a while. (R.T. of Oct. 8, 1980, at 161-78; Oct. 9, 1980, at 3-18.)

Jay Patrick Allen, who worked at West Coast Hobbies in San Diego in April 1976, testified that he sold a Cirrus brand radio-control device to a man accompanied by a woman, and placed it in a shoe box. (R.T. of Oct. 9, 1980, at 27-32.)

Robbert Lettiere testified that in May 1976 Adamson asked him to take a ride with him to the parking lot of the Arizona Republic. Adamson asked the guard there whether Don so-and-so's car was on the lot. He later told Lettiere that he was going to blow up a guy because he was stepping on people's toes and giving them hard times. Adamson told Lettiere that he would get about $10,000 for "this one," and asked Lettiere whether he would be interested in future work for a 10% cut of what he would make. They visited a Datsun dealership (Bolles'

car was a Datsun), where Adamson closely examined several cars -- including the undercarriage. The afternoon of June 2, 1976, Lettiere contacted Adamson at Neal Roberts' house to tell him that his name was being broadcast as a suspect in the bombing. The next night Adamson and his wife visited Lettiere. Adamson said, "You didn't believe I could do something like that, and you got to believe it now." Commenting that he would have to get a Datsun "because it sure as hell took a jolt," Adamson added that he could be in the same boat as Bolles because he botched the job. Lettiere accompanied Adamson and his wife to Neal Roberts' home the morning of June 4. Lettiere had also met James Robison at Adamson's apartment. Around New Year's Eve, 1975, Adamson took Lettiere to the storage area for his apartment, where Lettiere saw dynamite. (R.T. of Oct. 9, 1980, at 56-78.)

John Parsons testified that Adamson and James Robison were at Parsons' home in late 1975 or early 1976. When appellant saw Parsons' homemade bomb shelter, he said, "This would be a perfect place to store dynamite, and it would save a lot of time." (R.T. of Oct. 10, 1980, at 26-31.)

Attorney Tom C. Foster, who had an office in the First Federal Building adjacent to the Ivanhoe Lounge, stated that Adamson had asked him whether someone could leave a package for him at Foster's office. Patti Lloyd, Foster's secretary, testified that, after the bombing, Adamson appeared on three occasions at Foster's office inquiring whether someone had left a package for him. On one occasion, he and Max Dunlap conversed in one of the suites. (R.T. of Oct. 10, 1980, at 34-53.)

John Stubbs, a teller at the First National Bank at Washington and Central, testified that in June 1976, Max Dunlap came in and asked him to change 35 $100 bills into smaller

ones. Stubbs gave him 100 $20's and 100 $10's. (R.T. of Oct. 10, 1980, at 64.)

Sherman and Juanita Watters, managers of the Grandview Apartments, testified that on June 12, 1976, Adamson paid 2 month's rent with $420 in new $20 bills. Juanita Watters had seen James Robison at the apartments in April, May, and June; she also identified Dunlap's photograph and stated that she had seen him go into Adamson's apartment. (R.T. of Oct. 13, 1980, at 2-11.)

Eileen Katz, who was Neal Roberts' secretary during May through June, 1976, stated that she had seen Adamson several times at Roberts' office-home complex. She had also seen Max Dunlap, one of Roberts' clients, and James Robison at Roberts' office. Specifically, she recalled a conversation June 1, 1976, in Roberts' office between Roberts, Adamson, and a third man. She remembered Roberts saying, "Can you keep control of this in a definite radius?" The morning of June 2, 1976, she saw Dunlap in Roberts' office about 8:30, and Adamson about 10:00. Adamson told Ms. Katz to inform Roberts that "God" was there. Adamson, Roberts, and Dunlap talked, but Adamson left before Roberts left at 11:30 a.m. At a social occasion June 6, 1976, Katz heard Roberts say that he hoped that "poor bastard" (Bolles) would die. (R.T. of Oct. 13, 1980, at 12-45.)

Detective Marcus Aurelius testified that he was present in Adamson's apartment when police searched it, pursuant to a warrant, 2 days after the bombing. Police located five items simultaneously in the linen closet: an EverReady 6-volt battery, one spool each of insulated and noninsulated wire, and two red magnets (the same color as those used to attach the bomb to Bolles' car). Subsequently, police found a partially used role of black plastic electric tape, a 9-volt EverReady transistor battery, "The Anarchists's Cookbook," and two

homemade firecrackers with dynamite fuse in them. (R.T. of Oct. 8, 1980, at 147-53.)

Adamson did not, as he indicates in his petition, call "a number of witnesses to establish his alibi defense." (Petition, at 4.) The only witness he had upon that issue was Thomas O'Grady, who could not say with certainty what time Adamson gave him a ride the day of the bombing. The best O'Grady could do was estimate that Adamson gave him a ride between 11:00 and 12:00 noon. O'Grady contacted Adamson at the Ivanhoe Lounge (where Adamson hung out), which was less than a mile from the parking lot of the Clarendon House, where the bombing occurred. Thus, all O'Grady established was that he saw Adamson that day, but he could not pin down the time. (R.T. of Oct. 13, 1980, at 104-11.) Although it is true that one guard at the Arizona Republic parking lot said that an individual who drove onto that lot in May 1976 and asked for the location of Bolles' car was not Adamson, on cross-examination that guard admitted that he had no idea how tall the man was and did not remember whether he was wearing sunglasses. In addition, Robert Lettiere testified that he was with Adamson when Adamson drove to the Arizona Republic parking lot. This particular guard, however, stated that he saw only one person in the car, the driver. Moreover, that guard worked one shift and admitted that there were two other shifts of guards. Thus, even if one assumes that some individual other than Adamson asked that particular guard about the location of Bolles' car, that does not prove that the same guard was on duty when Lettiere accompanied Adamson to the parking lot. Lettiere knew only that he had accompanied Adamson on this one occasion; he had no way of knowing how many other times Adamson may have visited the parking lot. Finally, Adamson's statement in his petition that the general description given by the guard

at trial fitted Lettiere has no basis in the record because there is no description of Lettiere in the record. (R.T. of Oct. 13, 1980, at 93-99.)

When petitioner speaks about the newspaper article that he appends as an exhibit to the petition, the Court will note that nowhere in that article is any juror quoted as saying that he or she found "crucial" Bolles' statements on the parking lot that Adamson "did it" or that a "Mafia called Emprise" was involved. That was an editorial comment (obviously an inference drawn by the writer of the article) and not a quotation from any juror. Moreover, petitioner did not offer an affidavit from any juror stating that he or she found absolutely crucial the particular statements he now claims were so important.

REASONS FOR DENYING THE WRIT

The best reason for not granting certiorari in this case is that the majority of the Arizona Supreme Court applied the correct test for determining harmless error. Justice Feldman, in dissent, relies heavily on the "might have contributed to the verdict" language of Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). In addition, he found support for his dissent in the recent decision of Connecticut v. Johnson, ____Ariz.____, 103 S.Ct. 969, 74 L.Ed.2d 823 (1983). Those decisions, however, must be read in conjunction with Harrington v. California, 395 U.S. 250, 89 S.Ct. 1726, 23 L.Ed.2d 284 (1969), and the most recent pronouncement of this Court about the proper standard, United States v. Hasting, ___ U.S.____, 103 S.Ct. 1974, 76 L.Ed.2d 96 (1983). Both of those cases unequivocally stand for the proposition that if the reviewing court can say beyond a reasonable doubt that the jury would have convicted without the inadmissible evidence, the conviction may stand:

> The question a reviewing court must ask is this: absent the prosecutor's allusion to the failure of the defense to proffer evidence to rebut the testimony of the victims, is it clear beyond a reasonable doubt that the jury would have returned a verdict of guilty?

United States v. Hasting, 103 S.Ct. at 1981, 76 L.Ed.2d at 107. It is perfectly clear, that this Court is saying that the appellate court should examine the entire record: "On the whole record, we are satisfied beyond a reasonable doubt that the error relied upon was harmless." (Id. at 1982; 76 L.Ed.2d at 108.) It is important to bear in mind that Justice Feldman did not have the benefit of Hasting when he authored his dissenting opinion. The test enuciated in Harrington and Hasting is precisely the one applied by the majority in the instant case. 665 P.2d at 978.

If the Arizona Supreme Court applied the correct test, respondent respectfully asserts that the inquiry should end there. By implication, petitioner would seek the writ even if the Arizona Supreme Court utilized the proper standard because he disagrees that the evidence of guilt was overwhelming. If this Court should choose to reach that issue, respondent submits that the evidence was overwhelming. In focusing narrowly upon some statements made by Bolles as he lay in the parking lot -- his legs reduced to the consistency of raw hamburger -- both Justice Feldman and petitioner lose sight, and a sense of proportion, about all the other evidence presented by the state. Justice Feldman seizes upon the "identification" of Adamson as the murderer and the alleged involvement of the Mafia as critical under the test of matters that may have contributed to the verdict. He may be right under that test. However, that is not the test, and the state

presented an enormous amount of evidence, completely untainted by those few statements, that, even Justice Feldman admits, would sustain guilt beyond a reasonable doubt. 665 P.2d at 991. For instance, there was no refutation of the testimony of Richard Ryan that Adamson asked him to contact Don Bolles to tell Bolles that Adamson had information about the Funks and Sam Steiger (the Funks were involved in greyhound racing and Steiger is a well-known local political figure). At the hospital Bolles told Detective Sellers that the purpose of the meeting arranged by Adamson was to gather information about Steiger. Therefore, Justice Feldman's insistence that there was no other motive offered by the prosecution, apart from the reference to the Mafia, is not correct. The fact that Bolles told one witness that "Adamson [set or sent] me" was within Bolles' personal knowledge because he left notes at his office before going to the Clarendon House to meet Adamson, and he was able to communicate to Detective Sellers that he had gone to the hotel the day of the bombing to meet Adamson and received a call from him in the lobby while waiting for him. 665 P.2d at 976-77. The testimony of Robert Lettiere, which defense counsel could not rebut, was extremely damaging in that it contained admissions both before and after the bombing about Adamson's motivations (Bolles was stepping on some people's toes) and the fact that Adamson participated in the bombing. (Id.) The testimony of Gail Owens, who accompanied Adamson to West Coast Hobbies in San Diego a month before the bombing, and that of a clerk of that store to the effect that he sold a man, accompanied by a woman, a radio-controlled device he put into a shoe box, provided additional proof of Adamson's guilt. (Id.) The testimony

of Neil Roberts' secretary that she heard Roberts while meeting with Adamson say, "Can you keep control of this in a definite radius?" was hardly helpful to Adamson. Petitioner concedes that police, only 2 days after the bombing, executed a search warrant and found materials in his apartment very similar to those used in constructing the bomb. On the whole record, which is the test this Court established in Harrington and reaffirmed in Hasting, supra, it can be said beyond a reasonable doubt that the jury would have convicted even without the few statements about matters not within Bolles' personal knowledge.

Petitioner impugns the impartiality of the majority of the Arizona Supreme Court to objectively review his case because they were aware, due to his breaching a previous plea agreement, that he had pled guilty to Bolles' murder. Respondent submits that court would have reached the same conclusion if Adamson had never pled guilty. Petitioner characterizes his plea agreement as later declared "null and void." He does not mention that every court that considered that agreement concluded that he had breached it by refusing to testify at a planned retrial of James Robison and Max Dunlap. This Court denied certiorari in that matter. That the Arizona Supreme Court knew that Adamson had pled guilty in no way diminishes by one whit the overwhelming evidence against him.

Finally, petitioner conjectures that the few statements found inadmissible by the Arizona Supreme Court were the pivotal ones that swayed the original dissenters on the jury to change their votes. That is pure speculation because the jury was considering everything the state had presented and, petitioner must concede, everything else was

admissible. Moreover, the prosecutor mentioned neither the Mafia nor Emprise in his closing argument. This is a case in which the defendant, weeks before the bombing, told people he was going to blow up a particular person for "stepping on some people's toes," then proceeded to do exactly that. After the bombing, he told people that he had done it. If the evidence presented by the state was not overwhelming, it is difficult to imagine what would be.

CONCLUSION

The majority of the Arizona Supreme Court applied the proper test of harmless error, and there is no reason for granting the writ. The evidence, even devoid of those few inadmissible statements, was overwhelming beyond a reasonable doubt.

Respectfully submitted,

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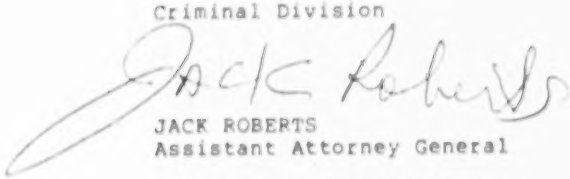

JACK ROBERTS
Assistant Attorney General

Attorneys for RESPONDENT

A F F I D A V I T

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

JACK ROBERTS, being first duly sworn upon oath, deposes and says:

That he served the attorney for the petitioner in the foregoing case by forwarding one (1) copy of RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI, in a sealed envelope, first class postage prepaid, and deposited same in the United States mail, addressed to:

GREGORY H. MARTIN
P.O. Box 5142
Scottsdale, Arizona 85261
Attorney for APPELLANT

this 26th day of August, 1983.

Jack Roberts
JACK ROBERTS

SUBSCRIBED AND SWORN to before me this 26th day of August, 1983.

Barbara J. Ordreno
NOTARY PUBLIC

My Commission Expires:

September 28, 1986

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